

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

RICKY LEE UMPHRIES,

Plaintiff,

v.

SMITH COUNTY, ET AL.,

Defendants.

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Case No. 6:19-CV-592-JDK-JDL

**ORDER ADOPTING REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

Plaintiff Ricky Lee Umphries, an inmate proceeding *pro se*, filed the above-styled and numbered civil rights lawsuit pursuant to 42 U.S.C. § 1983. The case was referred to United States Magistrate Judge John D. Love pursuant to 28 U.S.C. § 636. On February 26, 2020, the Magistrate Judge issued a Report and Recommendation (Docket No. 21), recommending that Plaintiff's claims should be dismissed for failure to state a claim upon which relief may be granted. *Id.* at 9. Plaintiff filed objections on March 9, 2020. Docket No. 22.

In his objections, Plaintiff largely restates the allegations in his Amended Complaint. *Id.* at 1–2. As the Magistrate properly concluded, however, Plaintiff's slipping and falling in his cell amounts to nothing more than unreasonableness or negligence, and it does not qualify as deliberate indifference under the Eighth Amendment. *See, e.g., Atkins v. Sheriff's Jail Avoyelles Parish*, 278 F. App'x 438, 439 (5th Cir. 2008); *McLaughlin v. Farries*, 122 F. App'x 692, 693 (5th Cir. 2004). Further, Plaintiff also failed to state a claim for failure to protect against Defendant Smith because Plaintiff does not allege that Smith was personally involved in making the housing decisions that placed Plaintiff in the same cell as inmate Deer or that Smith knew that Deer would assault


Plaintiff. *See Porter v. Epps*, 659 F.3d 440, 446 (5th Cir. 2011); *Jacquez v. Procunier*, 801 F.2d 789, 793 (5th Cir. 1986). Plaintiff also failed to allege that Smith implemented unconstitutional policies that causally resulted in his injuries. *See Porter*, 659 F.3d at 446. Plaintiff's claims must therefore be dismissed.

Having made a *de novo* review of the objections raised by Plaintiff to the Magistrate Judge's Report, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and Plaintiff's objections are without merit. The Court therefore adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of the Court.

Accordingly, it is hereby **ORDERED** that the Report and Recommendation (Docket No. 21) be **ADOPTED**. It is further

ORDERED that Plaintiff's suit is **DISMISSED WITH PREJUDICE**.

So **ORDERED** and **SIGNED** this **18th** day of **March, 2020**.


JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE